

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

July 25, 2023 at 2:00 p.m.

1. <u>19-26529-E-13</u> <u>MJD-6</u>	PAUL WILSON AND JESSICA MAINVOILLE-WILSON Matthew DeCaminada	MOTION TO MODIFY PLAN 6-20-23 [<u>151</u>]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 20, 2023. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is granted.
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The debtor, Paul Wilson and Jessica Lucia Mainvoille-Wilson (“Debtor”) seeks confirmation of the Modified Plan because Debtor is dealing with health issues. Because of illness, debtor Jessica

Wilson is no longer working and will be relying on retirement and social security disability income. Debtor's plan proposes to save money by lowering expenses in food, clothing, personal care and transportation. Debtor states that because Debtor is not working, Debtor is not driving or eating out as often. Declaration, Dckt. 154.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Modified Plan provides Debtor has paid \$64,036.00 to the Chapter 13 Trustee through September 2022 payments shall be \$2,800.00 for the remainder of the Plan, and a 0% percent dividend to unsecured claims totaling \$17,074.02. Modified Plan, Dckt. 152. However, the Motion itself states Debtor has paid \$64,036.00 through June 2023, not September 2023, followed by payments of \$2,800.00 for the remainder of the Plan. Dckt. 151. Trustee has also noted this discrepancy and believes the payments as stated in the Motion are correct. Dckt. 161. The court agrees and believes the Plan has a typographical error.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 10, 2023. Dckt. 161. Trustee opposes confirmation of the Plan on the basis that:

1. **Feasibility:** Trustee cannot assess feasibility of the plan as (1) the plan is not clear in accounting for post-petition mortgage arrears and (2) the plan may not accurately reflect payments made to date.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

1. **Post petition mortgage arrears** - Due to prior delinquencies, Trustee has lacked funds to pay the post-petition installments to Shellpoint Mortgage Servicing in the amount of \$2,840.52 for the months of February and May 2023. Dckt. 161. The modified plan proposes addition mortgage arrears payment in the amount of \$1,420.26 when the actual amount owed is \$2,840.52. Therefore, Trustee cannot comply with the plan. Trustee would not be opposed to correcting that amount and clarifying the months of the delinquency in order confirming plan.
2. **Conflicting Plan and Motion to Confirm** - Due to discrepancies stated above, it appears Debtor the Plan should state Debtor has paid \$64,036.00 through June 2023, followed by payments of \$2,800.00.

It appears the Plan can be amended to address and clarify the above in the order confirming. At the hearing, ~~XXXXXXXXXX~~

~~_____The Modified Plan, as amended, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Paul Wilson and Jessica L. Mainvoille-Wilson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan, as amended:~~

~~1. The amount of post-petition arrears owed to Class 1 Creditor, Shellpoint Mortgage Servicing, for the months of February 2023 and May 2023 total \$2,840.52.~~

~~2. The additional provisions, Section 7.01 of the Modified Plan, provide that Debtor has paid \$64,036.00 to the Chapter 13 Trustee through June 2023, followed by payments of \$2,800.00 per month for the remainder of the Plan.~~

~~filed on June 20, 2023 is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 15, 2023. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

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<p>The Objection to Confirmation of Plan is sustained.</p>

Paramount Residential Mortgage Group, Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Creditor's claim is improperly classed as a Class 4, where it should be Class 1.
2. The plan fails to cure pre-petition arrears .

DISCUSSION

Creditor's objections are well-taken

Classification of Claim

Debtor lists Creditor's claim as a Class 4 claim secured by 1138 Elderwood Drive Galt, CA 95632. Dckt. 4. Class 4 claims are those which shall be paid by the Debtor and are not in default or modified by the plan. Creditor states a total of \$13,446.32 is needed to cure default on the claim as of the date of the petition. Proof of Claim 6-1.

Creditor's claim is misclassified, and should be included as a Class 1 Claim. As proposed, Debtor will be unable to comply with the Plan under 11 U.S.C. § 1325(a)(6).

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$13,446.32 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Paramount Residential Mortgage Group, Inc. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on June 22, 2023. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in any amount exceeding \$100,000.00.

The Chapter 13 Trustee, David P. Cusick ("Trustee") objects to Carrie Lynn Charlton's ("Debtor") claimed exemptions under California law because Debtor appears to have over-exempted the homestead exemption available to her at the time of filing under California Code of Civil Procedure § 704.730. Dckt. 45.

Debtor filed her petition on September 22, 2020. Dckt. 1. Therefore, the homestead exemption available to Debtor is found in the version of California Code of Civil Procedure § 704.730 that was effective as of that date. The applicable provision states as follows:

(a) The amount of the homestead exemption is one of the following:

(1) **Seventy-five thousand dollars (\$75,000)** unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) **One hundred thousand dollars (\$100,000)** if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a **family unit**, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) **One hundred seventy-five thousand dollars (\$175,000)** if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person **65 years of age or older**.

(B) A person **physically or mentally disabled** who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person **55 years of age or older with a gross annual income of not more than** twenty-five thousand dollars (**\$25,000**) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars (**\$35,000**) and the sale is an involuntary sale.

Cal. Code Civ. Pro. § 704.730(a) (2020).

Debtor's Amended Schedule C exempts \$200,634.00 under the above-quoted California Code of Civil Procedure § 704.730 for real property located at 541 Grants Pass Pl., Redding, California. Dckt. 41, PDF p. 8.

Debtor's Amended Schedule I/J indicates that Debtor does not have a spouse nor any dependants. Amended Schedule I/J, Dckt. 29. In these amended schedules, Debtor states "N/A" when asked about their spouse's employment and income. *Id.* Amended schedules relate back to the date of the petition filing.

However, Debtor's original Schedules indicate that Debtor was married at the time of filing. Schedule I, Dckt. 1; Statement of Current Monthly Income, ¶ 13, Dckt. 1. Therefore, it is unclear whether Debtor was married at the time of filing.

California Law Regarding Date From Which Exemption is Computed

The California Legislature has enacted an express California Statute which provides for when the amount of the California Homestead exemption is determined. California Code of Civil Procedure § 703.100 provides:

§ 703.100. Time for determination of exemptions

(a) Subject to subdivision (b), the **determination whether property is exempt shall be made** under the circumstances existing **at the earliest of the following times**:

(1) The time of levy on the property.

(2) The time of the commencement of court proceedings for the application of the property to the satisfaction of the money judgment.

(3) The time a lien is created under Title 6.5 (commencing with Section 481.010) (attachment) or under this title.

As provided in 11 U.S.C. § 544(a)(1) the trustee (or Debtor in Possession or Chapter 13 Debtor exercising the powers of a trustee) is give the status of a judgment lien creditor of the debtor as of the commencement of the bankruptcy case.

(b) The court, in its discretion, may take into consideration any of the following changes that have occurred between the time of levy or commencement of enforcement proceedings or creation of the lien and the time of the hearing:

(1) A change in the use of the property if the exemption is based upon the use of property and if the property was used for the exempt purpose at the time of the levy or the commencement of enforcement proceedings or the creation of the lien but is used for a nonexempt purpose at the time of the hearing.

(2) A change in the value of the property if the exemption is based upon the value of property.

(3) A change in the financial circumstances of the judgment debtor and spouse and dependents of the judgment debtor if the exemption is based upon their needs.

Cal Code Civ Proc § 703.100 (emphasis added).

This Bankruptcy Case was filed on September 22, 2020. Petition; Dckt. 1. As of September 22, 2020, the homestead exemption that could be asserted against judgment lien creditors was \$75,000.00 for the judgment debtor, \$100,000.00 if the judgment debtor is a member of a family unit, \$175,000.00 if: (1) the judgment debtor was 65 years of age or older, (2) if the judgment debtor was disabled and unable to work, or (3) the judgment debtor was 55 years of age or older and (i) had gross annual income of \$25,000. or less, or (ii) married with a gross income of less than \$35,000.00. *See* 2012 Cal. AB 929 and 2020 Cal. AB 1885 (effective January 1, 2021).

It appears that the Debtor is attempting to claim the homestead exemption amount that went into effect January 1, 2021, not the one in effect when the Bankruptcy Case was filed on September 22, 2020.

It appears that the correct homestead exemption amount is \$100,000.00, Debtor stating that she was married at the time this case was filed. Debtor states on Schedule I that her gross annual income was \$93,060.00. Dckt. 1 at 29.

Income Information Questions

As the Trustee notes, when this case was filed Debtor stated she was married. Schedule I, Stmt of Fin Affairs ¶ 1; Dckt. 1 at 29-30, 34. Looking at Schedule I, Debtor stated that the non-debtor spouse had very limited income as a self-employed contractor “due to covid income is limited. Sch I; *Id.* at 30.

The income of the non-debtor spouse may not be accurately stated, as Debtor says it is only a “Spousal Contribution,” not the non-debtor spouses actual gross income.

On April 14, 2023, and “Amended” Schedule I was filed by Debtor. Dckt. 29. If an actual “amended” Schedule I, then these changes would date back to the September 22, 2020 filing of this case.

Additionally, on Amended Schedule I with respect to non-debtor spouse income, it is stated as “N/A.” It may be that marriage has been dissolved or that the non-debtor spouse has passed away. That will not change the homestead exemption in effect when this case was filed.

However, some non-spousal income questions arise. With the original Schedule I, the question is not what the non-debtor spouse is willing to “contribute,” but the actual gross income and net income of the non-debtor spouse.

Debtor’s Declaration, Dckt. 39, filed in support of the Motion to Confirm Modified Plan, recounts the difficult situation relating to the non-debtor spouse, his having income but choosing to divert it to other uses rather than “contributing” to the plan. The Declaration discloses that there will be dissolution proceedings. This may well end up in there being a “forced” support payment and an increase in Debtor’s income.

The court is confident that the Chapter 13 Trustee and Debtor can work on moving this case forward so that Debtor can continue to obtain relief here, and that Debtor diligently obtains any support payments, a portion of which may increase the Plan payment in this case.

Decision

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, “the objecting party has the burden of proving that the exemptions are not properly claimed.” FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce

unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

Therefore, the homestead exemption available to Debtor at the time of filing was, and continues to be, \$100,000.00 under California Code of Civil Procedure § 704.730(a)(2). Debtor has over-exempted by \$100,634.00. The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed in any amount exceeding \$100,000.00.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claimed Exemptions filed by The Chapter 13 Trustee, David P. Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained, and the claimed homestead exemptions for the real property located at 541 Grants Pass Pl., Redding, California, under California Code of Civil Procedure § 704.730 are disallowed in any amount exceeding \$100,000.00.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 7, 2023. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is granted.</p>

The debtor, Karen Gheorma (“Debtor”) seeks confirmation of the Modified Plan to modify the percentage paid to unsecured creditors from 13.0% to 0.00%. Declaration, Dckt. 32. The Modified Plan provides \$2,545.00 to be paid through 60 months and a 0.00 percent dividend to unsecured claims totaling \$119,827.64. Modified Plan, Dckt. 27. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 7, 2023. Dckt. 36. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor does not provide an amended cover sheet for Schedules I and J.

DEBTOR'S RESPONSE

Debtor states they have addressed Trustee's concerns by filing Supplemental Schedules I and J with an amended cover sheet with Debtor's signature on July 10, 2023. Dckt. 42. The court notes, these documents have been filed separately on the docket:

Supplemental Schedule I.....Dckt. 39

Amended Summary of
Schedules/Assets and Liabilities.....Dckt. 40

Supplemental Schedule J.....Dckt. 41

Amendment Cover Sheet.....Dckt. 42

Although filed separately, Debtor's Supplemental Schedules resolves Trustee's concerns. Dckts. 39-41. Thus, the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Karen Gheorma ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on June 7, 2023, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 26, 2023. By the court’s calculation, 29 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----
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<p>The Objection to Confirmation of Plan is sustained.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor failed to appear at the First Meeting of Creditors.
- B. Debtor is delinquent in plan payments.
- C. Debtor failed to provide tax returns.

DISCUSSION

Trustee’s objections are well-taken.

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Trustee's July 14, 2023 Docket Entry Report states that the two Debtors appeared at the July 13, 2023 continued First Meeting of Creditors and it was concluded. This basis of the Objection has been resolved.

Delinquency

Debtor is \$5,650.00 delinquent in plan payments, which represents one month of the \$5,650.00 plan payment. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Prior Cases

In reviewing the court's files, they disclose that Debtor has had multiple recent bankruptcy cases that have been dismissed. These are:

A. Chapter 13 Case 22-22110:

1. Filed August 23, 2022.
2. Dismissed April 20, 2023.
3. Debtor represented by same counsel as in the present Case.
4. Over the ten months of Case 22-22110, Debtor's paid the grand total of \$2,300.00 into the Plan, which monies were disbursed to Debtor's counsel for her fees and to pay the Chapter 13 Trustee fees for those monies disbursed.

B. Chapter 13 Case 22-21490

1. Filed June 15, 2022.

2. Dismissed July 5, 2022.
 3. Debtor prosecuted it *pro se*.
- C. Chapter 13 Case 21-24161
1. Filed December 14, 2021.
 2. Dismissed March 17, 2022.
 3. Debtor represented by different counsel than the one in the current Case.
 4. No payments made by Debtor in Case 21-24161; Trustee's Report, Dckt. 43.
- D. Chapter 13 Case 19-20238
1. Filed January 15, 2019.
 2. Dismissed September 27, 2019.
 3. Debtor represented by same counsel as in Case 21-24161.
 4. Debtor made payments totaling \$5,567 during the nine months Case 19-20238 was pending. Trustee's Final Report; 19-20238, Dckt. 77.
- E. Chapter 13 Case 18-20217
1. Filed January 16, 2023.
 2. Dismissed December 6, 2018.
 3. Debtor represented by difference counsel than those in the subsequent cases.
 4. Debtor made payment totaling \$17,078 during the 13 months Case 18-20217 was pending. Trustee's Final Report; 18-20217, Dckt. 43.

Over the past five years Debtor has been unable to successfully prosecute a Chapter 13 case in this court. For the Chapter 13 Plan in the current case, Debtor lists the Class 1 claim secured by the Cloverleaf Circle Property to be (\$162,000.00) in arrears and post-petition monthly payments of \$2,253.32 and \$2,537.59 arrearage cure payments are required. Plan, ¶ 3.07; Dckt. 3. The Plan further provides that the arrearage cure payments will not begin until Debtor's counsel is paid in full for her attorney's fees in this Case.

Looking back at the Chapter 13 Plan in Case 18-20217, Debtor stated that the arrearage on the Class 1 Secured Claim for which the Cloverleaf Circle Property was only (\$35,000). Thus, in the past five years of obtaining bankruptcy relief, the arrearage has grown by (\$127,000.00), which is an increase of 362.85%.

Proof of Claim 1-1 filed by PennyMac Loan Services, LLC for the above secured claim states that the pre-petition default is (\$167,876.43).

On Amended Schedule J, Dckt. 17, Debtor states having \$7,260.00 in monthly net income and only (\$1,610.00) in monthly expenses. For these two adult Debtors, some questionable monthly expenses are:

- A. Food and Housekeeping Supplies.....(\$300.00)
 - 1. Assuming (\$50.00) a month for housekeeping supplies, that would leave only (\$125.00) per month for each of the two adult Debtors. In a 30 day month, that is only (\$1.38) per meal for each of the two adult Debtors.
- B. For Transportation, Debtor lists a (\$50.00) a month expense.
 - 1. On Schedule A/B Debtor lists owning a 2014 BMW 428i.
 - 2. On Amended Schedule I Debtor states that the car payment is being made by the daughter. No information is provided about maintenance, repairs, registration, and fuel.

Debtor also stated on Amended Schedule I that they have “Boarders.” No information is provided about the income, expenses, and taxes paid for such business.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on June 29, 2023. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----
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<p>The Objection to Confirmation of Plan is sustained.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Delinquency: Debtor is delinquent in Plan payments.
- B. The Plan may not be feasible due to the Plan's Section 7 Non-Standard Provisions:
 - 1. Debtor's Plan says Debtor is "filing an adversary action against Class 1 Creditor, ShellPoint Mortgage Servicing" (Dckt. 3); however, no such adversary proceeding has been identified.

2. Debtor's Plan says that the "Trustee shall set aside \$150 per month of Debtor's monthly Plan payment in trust for further Attorney's fees incurred-post petition (Dckt. 3); however, this creates undue burden for the Trustee.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$2,202.67 delinquent in plan payments, which represents one month of the \$2,202.67 plan payment. On the date of the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Feasibility / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has failed to adequately explain the proposed Plan's Section 7 non-standard provisions. First, the Plan's Section 7 non-standard provisions discuss an adversary proceeding against creditor ShellPoint Mortgage Servicing, but no such adversary proceeding has been identified.

Second, the proposed Plan's Section 7 non-standard provisions discuss attorney's fees but do not provide an estimate of the likely amount of attorney's fees, so the Plan may be underfunded. Beyond that, the non-standard provision regarding attorney's fees creates an undue burden on the Trustee. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

While saying the \$150.00 a month will be held in "trust," it appears that Debtor is actually saying that the Chapter 13 Trustee shall retain \$150.00 of the monthly payment and not disburse the monies except upon further order of the court. If the Trustee finds this retention of \$150.00 an administrative burden, one possible alternative would be to have a monthly disbursement of the \$150.00 to Debtor's counsel, to be held in Debtor's counsel client trust account and not disbursed except upon further order of the court.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

7. [23-21488-E-13](#) **SHARMAINE MORZO** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **Chad Johnson** **PLAN BY DAVID P. CUSICK**
6-29-23 [\[12\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on June 29, 2023. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent
- B. Plan relies on pending motions to (1) value secured claim of Foundation Finance, and (2) avoid the lien of Service Finance

DISCUSSION

Trustee’s objections are well-taken.

Delinquency

Debtor is \$2,417.00 delinquent in plan payments, which represents one month of the \$2,417.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor’s Reliance on Motion to Value Secured Claim

A review of Debtor’s Plan shows that it relies on the court valuing the secured claim of Foundation Finance. Debtor has failed to file a Motion to Value the Secured Claim of Foundation Finance, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor’s Reliance on Avoidance of Lien

A review of Debtor’s Plan shows that it relies on the court avoiding the lien of Service Finance. Debtor has failed to file a Motion to Avoid Lien of Service Finance, however. Without the court avoiding the lien, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Plan does not comply with 11 U.S.C. § 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 26, 2023. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----
-----.

<p>The Objection to Confirmation of Plan is sustained.</p>

Bank of America, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Proposed plan does not accurately list arrearages
- B. Plan is not feasible

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$60,393.91 in pre-petition arrearages. Proof of Claim 1-1. The Plan lists \$52,000.00 as the Amount of Arrears. Plan, Dckt. 3. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Insufficient Plan Payments

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The proposed plan accounts for \$52,000.00 of the \$60,393.91 arrearages owed to Creditor. Debtor needs to increase payments to provide the additional \$8,393.91 to Creditor. The plan provides for monthly payments of \$2,300.00, which is equivalent to Debtor's net income. Schedule J, Dckt. 1. Debtor has insufficient funds to increase plan payments to account for the full arrearage in plan payments. Thus, the Plan may not be confirmed.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed Bank of America, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

FINAL RULINGS

9. [23-21403-E-13](#)
[PLC-1](#)

VERNON DAVIS
Peter Cianchetta

AMENDED MOTION TO CONFIRM PLAN
6-12-23 [\[22\]](#)

Final Ruling: No appearance at the July 25, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 12, 2023. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Amended Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is denied as moot.

On June 9, 2021, Debtor filed a Motion to Confirm the Modified Chapter 13 Plan. Dckt. 14. However, no such modified plan was filed concurrently with the Motion.

On June 12, 2023, Debtor filed an "Amended Motion to Confirm Modified Chapter 13 Plan." Dckt. 22. The new Chapter 13 Plan was not filed until June 13, 2023. Dckt. 27. The new Plan did not state whether it was a modified or amended plan.

The court notes, there is no confirmed plan. Procedurally, the filing of a new plan pre-confirmation is an "amended plan." Thus, procedurally, the plan filed on June 13, 2023 is a First Amended Plan, rather than a Modified Plan.

On July 5, 2023, the Chapter 13 Trustee filed an Opposition to confirmation. Dckt. 29.

On July 11, 2023, Debtor filed a “Request to Drop Motion to Confirm Amended Plan.” Dckt. 31. Debtor did not provide the court with legal grounds to unilaterally “drop” a motion. Additionally, the request was to drop the Motion to Confirm, not Amended Motion. Therefore, it is unclear to the court whether Debtor intended the Amended Motion to still be decided by the court.

However, Debtor filed a new Plan and corresponding Motion to Confirm on July 17, 2023. Dckts. 32, 34. Like the First Amended Plan, this new Plan does not state whether it is a modified or amended plan. However, the Motion to Confirm states it is a “Modified Chapter 13 Plan.” For the same reasoning as above, this new Plan is actually an amended Plan. Therefore, the court will treat the new Plan as Debtor’s Second Amended Plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Filing a new plan is a de facto withdrawal of the pending plan. The Amended Motion to Confirm the Amended Plan is denied as moot, and the plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Amended Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Vernon Lee Davis (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Amended Motion is denied as moot, and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the July 25, 2023 Hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 13, 2023. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The hearing on the Motion to Confirm the Amended Plan is continued to 2:00 p.m. on August 8, 2023.

The debtor, Scott Brian Williams and Yancey Bataclan Cuyugan ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly Plan payments of \$372.00 for a period of four (4) months, followed by monthly Plan payments of \$979.00 for a period of six (6) months, followed by monthly Plan payments of \$1,248.00 for a period of fifty (50) months. Amended Plan, Dckt. 57. The Amended Plan also provides for payment in full of the IRS's priority claim in the amount of \$1,418.11. *Id.* The Amended Plan further provides for an approximately 43% dividend to unsecured creditors. *Id.* 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 3, 2023. Dckt. 63. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is slightly delinquent (by \$127.00) in Plan payments.

DEBTOR'S REPLY

Debtor filed a reply to the Trustee's Opposition on July 6, 2023. Dckt. 66. Debtor states that they made a payment of \$127.00 through TFS, thereby curing the delinquency, and they are now current with their Plan payments. *Id.*

DISCUSSION

In light of the small amount in default and the stated cure in process, the court continues the hearing to 2:00 p.m. on August 8, 2023. This will allow the Trustee to confirm that the payment has been made and file a supplemental statement that the Trustee no longer opposes confirmation. The court can then prepare a final ruling in advance of the continued hearing, saving counsel for Debtor having to appear.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Scott Brian Williams and Yancey Bataclan Cuyugan ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the July 25, 2023 Hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 8, 2023. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

The Motion to Substitute has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion to Substitute is continued to 2:00 p.m. on August \8, 2023.

Joint Debtor, Ned Ellis Smith, seeks an order approving the motion to substitute Joint Debtor for the deceased Debtor, Edna Smith. This motion is being filed pursuant to Federal Rules of Bankruptcy Procedure 1016 and 9014(c) and Federal Rule of Civil Procedure 25.

Debtor filed for relief under Chapter 13 on April 1, 2020. On January 26, 2021, Debtor's Chapter 13 Plan was confirmed. Dckt. 81. On April 24, 2023, Debtor Edna Smith passed away. Joint Debtor asserts that he is the lawful successor and representative of Debtor.

Pursuant to Federal Rules of Bankruptcy Procedure 1016 and 9014(c) and Federal Rule of Civil Procedure 25, Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing his own obligations and duties. A Suggestion of Death was filed on June 8, 2023. Dckt. 97. Joint Debtor is the husband of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that he will continue to prosecute this case in a timely and reasonable manner.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David P. Cusick, (“Trustee”) filed an Opposition on July 10, 2023. Dckt. 111. Trustee opposes the Motion on the basis that:

1. Debtor’s Schedule A/B (Dckt. 1) listed life insurance policies, but the Motion to Substitute and declaration in support do not address these policies.
2. The feasibility of the plan is unclear based on Debtor’s Schedule I (Dckt. 53), which indicated that the deceased Debtor was receiving certain Social Security and pension or retirement income, and the Motion to Substitute and declaration in support do not address what the status of this income will be in light of deceased Debtor’s death.

DEBTOR’S REPLY

Debtor filed a reply to the Trustee’s Opposition on July 12, 2023. Dckt. 115. Debtor addresses each of Trustee’s concerns and includes a declaration in support. Dckt. 116. Debtor states that although they had life insurance policies at the time the Chapter 13 case was filed, the life insurance policy of the deceased Debtor was canceled by the insurance provider just months before deceased Debtor’s death. Dckt. 115; Dckt. 116.

Debtor further states that his adult son has been providing Debtor with financial assistance since deceased Debtor’s death and is willing and able to assist Joint Debtor through the completion of the Chapter 13 case. Dckt. 115; Dckt. 116.

Debtor filed Supplemental Schedules I and J on July 12, 2023. Dckt. 114.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case “pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id.*

While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether “[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Joint Debtor has not provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. Although Joint Debtor states that their adult son, Jason Smith, is assisting Joint Debtor with Plan payments, Joint Debtor has not provided evidence in the form of a declaration from Jason that Jason is able and willing to assist Joint Debtor for the remainder of the Plan.

Further, based on Debtor's Supplemental Schedules I/J, Dckt. 114, Debtor's net income, including the assistance from son, Jason Smith, is \$448.00. The confirmed Plan, however, states Plan payments are to be \$448.00 for 24 months, then \$515.00 for 36 months. Plan, Dckt. 52. Here, we are in the third year of the Plan. Therefore, even if there were sufficient evidence that Jason would contribute to the Plan, there is not enough net income to fund the Plan.

Clearly supplemental evidence is required. The court continues the hearing to afford the Joint Debtor to provide evidence of the additional income (such as the son's declaration of his ability and commitment to provide the support through the term of the Plan), evidence of the ability to make the increased Plan payment amount, and how the Joint Debtor will investigate and document the stated cancellation of the late Debtor's insurance policy and whether there are claims that exist for the Estate with respect to the stated cancellation of the Policy.

The court continues the hearing for the convenience of the parties and to avoid the need for multiple appearances.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion is continued to **2:00 p.m. on August 9, 2023.**

Final Ruling: No appearance at the July 25, 2023 Hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 25, 2023. By the court’s calculation, 47 days’ notice was provided. 28 days’ notice is required.

The Motion to Substitute has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Substitute is granted.

Volodymyr Varha (“Successor”), seeks an order approving the motion to substitute Volodymyr for the deceased Debtor, Mykola Varha (“Debtor”). The court has noted in their prior order continuing the hearing date that the Motion for Substitution appears to be brought by a non-existent person, the deceased Debtor, when it is actually being brought by Successor. Order, Dckt. 75. Successor brings this Motion pursuant to Federal Rules of Bankruptcy Procedure 1016, 7025, and 9014(c) (which incorporates Rule 7025).

Debtor filed for relief under Chapter 13 on January 20, 2020. On March 11, 2020, Debtor’s Chapter 13 Plan was confirmed. Dckt. 46. On March 31, 2023, Debtor Mykola Varha passed away. Successor asserts that he is the lawful successor and representative of Debtor. Declaration, Dckt. 73.

Pursuant to Federal Rules of Bankruptcy Procedure 1016 and 7025, Successor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing his own obligations and duties. A Suggestion of Death was filed on May 25, 2023. Dckt. 61. Successor is the son of the deceased party and is the successor’s heir and lawful representative. Successor states that he will continue to prosecute this case in a timely and reasonable manner.

CREDITOR'S OPPOSITION

Creditor Daimler Truck Financial Services USA LLC ("DTFS") filed an opposition to the motion for substitution on June 26, 2023. Dckt. 66. Creditor states:

1. Successor's request under Federal Rules of Bankruptcy Procedure 7025 is improper because Rule 7025 applies to adversary proceedings. Rather, Rule 1016 applies.
2. Under Federal Rules of Bankruptcy Procedure 1016, Creditor argues:
 - a. The parties are not benefitted by the continuation of the case:
 - i. Unsecured claims receive 0%;
 - ii. Secured claims are better benefitted by taking possession of and liquidating their collateral to reduce the indebtedness; and
 - iii. Successor is not a party to the case, rather, they are seeking to become a party. Creditor cites the following cases: *In re Miller*, 526 B.R. 857, 862 (D. Colo. 2014); *In re Hennessy*, 2013 Bankr. LEXIS 3034, * 3-4 (Bankr. N.D. Ca. 2013).
 - b. It is not clear whether further administration is possible:
 - i. Successor has not provided evidence of their income and expenses. Volodymyr filed for bankruptcy in 2020. In that case, Successor's net income was only \$13.85. If Successor cannot provide evidence for enough disposable income, further administration is not possible.

SUCCESSOR'S RESPONSE

Successor filed a response on June 28, 2023. Dckt. 69. Successor states:

1. A deceased debtor's heirs should be considered when determining whether continued administration of a case is appropriate. Debtor cites *In re Inyard*, 532 B.R. 364, 372 (Bankr. D. Kan. 2015) and *In re Bond*, 36 B.R. 49, 51 (Bankr. E.D.N.C. 1984).
2. Creditor's claim has been bifurcated between secured and unsecured. Creditor would receive more by completing the Plan than liquidating the asset.
3. Successor has been successfully making payments, and has been successfully running Debtor's business since Debtor's death. Successor's

financial situation has changed since filing for Successor's own bankruptcy case, making the completion of Debtor's Plan feasible. Debtor has filed a Supplemental Declaration, Exhibit A - Supplemental Schedules I and J, and Exhibit B - Plan Payment History in support.

DISCUSSION

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. As Creditor notes in its opposition, Federal Rule of Bankruptcy Procedure 7025 applies in adversary proceedings. However, it is also incorporated into Federal Rule of Bankruptcy Procedure 9014(c), which expands its use to the bankruptcy case and all motions, applications, objections to claim, and the like.

The motion for substitution also cited Federal Rule of Bankruptcy Procedure 1016, so the court will address substitution under Rule 1016. Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id.*

At this juncture, the court notes that a fundamental principle of federal court proceedings is that there must be a real party in interest for the respective rights and interests being adjudicated. The Supreme Court expressly states in Federal Rule of Bankruptcy Procedure 1016 that notwithstanding the death of a Chapter 13 debtor, the Chapter 13 case may be further administered. For that to occur, the court has to appoint a successor in interest as the representative of the Bankruptcy Plan and Plan Estate. It also needs to be remembered that the bankruptcy estate continues to have an interest in the property of the Plan Estate and Debtor, if it revested, because in the event this case were converted to Chapter 7, then such property is property of the Chapter 7 bankruptcy estate. 11 U.S.C. § 348(f).

While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Successor has provided sufficient evidence to show that administration of the Chapter 13 case is possible. Although Successor himself filed for Chapter 7 in 2020, in which Successor's Schedules I/J illustrate that Successor's net income was only \$13.85 (*See* Case No. 20-23163, Schedule J, Dckt. 1), Successor has provided adequate evidence that their financial circumstances have changed and they are able to make Plan payments. Declaration, Dckt. 71; Exhibits in Support of Response, Dckt. 70. Additionally, Successor does not become the Debtor, but is the successor in interest to serve as the Plan Administrator and control assets of the estate, having the same fiduciary duties as did the late Debtor in that role.

Additionally, further administration appears in the best interest of all parties.

The Plan provides for payment in full to secured claims and a zero percent dividend to unsecured claims. Debtor's secured claims provided for in the Plan includes three automobile loans.

As Successor has noted, two of these claims, including Creditor's, were reduced based on the value of the vehicles in 2020. This valuation is a very important right arising under the Bankruptcy Code and not one that is casually thrown away. These loans will be paid in full based on their 2020 value.

Debtor's business is a trucking business. These two claims are secured by commercial vehicles. Thus, it is likely large mileage was added to these two vehicles since the Plan was confirmed in 2020, reducing their value. Absent evidence showing otherwise, the court finds holders of these claims will likely receive more under the Plan than if these creditors were to liquidate the collateral.

The third claim is not reduced by the value of the collateral, as it was a purchase money security interest incurred less than 910 prior to the petition date. Proof of Claim 6-1. Thus, Successor will be paying the claim in full, even if the value of the collateral was less than the claim at the time of filing the petition. The court finds this claim will receive more under the Plan than outside of the Plan, as Debtor's heirs would not be incentivised to pay the claim in full, based on the reduced value of the collateral.

Thus, further administration appears in the best interest of creditors.

The court does not find that just because Debtor is now deceased, Debtor no longer has an interest in the case. There is no provision in the bankruptcy code that provides once a debtor is deceased, they are no longer a party in interest. A longstanding principle of bankruptcy is that death of a debtor shall not abate a bankruptcy proceeding. *See Hull v. Dicks*, 235 U.S. 584, 587 (1915). Additionally, 11 U.S.C. § 1328 does not limit a deceased debtor's ability to receive a discharge. Rather, the eligibility of a debtor, who receives a discharge, is determined as of the date of filing, consistent with the provisions of the bankruptcy code. 11 U.S.C. § 109(e) ("Only an individual with regular income that owes, **on the date of the filing of the petition . . .**") (emphasis added). Thus, it appears that if a debtor dies during the life of a bankruptcy case, their interest remains in place, as of the date of filing the petition.

Creditor is correct, and it does not appear that an heir is a party in interest that the court must consider when determining whether further administration is in the best interest of the estate. *See In re Miller*, 526 B.R. 857, 862 (D. Colo. 2014) (Interests of spouse of a debtor were not relevant under Rule 1016, as spouse was not a party to the bankruptcy case); *In re Hennessy*, No. 11-13793, 2013 Bankr. LEXIS 3034, at *3 (Bankr. N.D. Cal. July 29, 2013) (Beneficiaries of debtor are "strangers to the court.").

However, penalizing Debtor and their heirs by dismissing Debtor's bankruptcy case, after Debtor is over halfway through their Plan, does not appear equitable. *See In re Inyard*, 532 B.R. 364, 372 (Bankr. D. Kan. 2015) ("Penalizing [debtor] (or his heirs, if their interests can even be considered) because he died when he had completed over two-thirds of the payments under the plan does not comport with the Bankruptcy Code's goal of giving deserving debtors a fresh start.).

Debtor could have filed under Chapter 7, which would likely have resulted in a smaller distribution to creditors, even those holding secured claims. Debtor, and debtor's successors, should not be stripped of the benefits of Debtor's efforts in prosecuting thirty-months of their Chapter 13 case. *See In re Stewart*, No. 01-66434-fra13, 2004 Bankr. LEXIS 1042, at *3 (Bankr. D. Or. Mar. 2, 2004) ("The Debtor could have filed under Chapter 7, with the likely result of a smaller distribution to creditors. Instead, he chose to proceed under Chapter 13, and complied with the plan in every respect until his death. The Debtor's

family should not be deprived of the benefits of these efforts: to do so would effectively penalize the debtor for having elected to reorganize.”).

Withdrawal of Opposition to Motion For Substitution

On July 21, 2023, Creditor Daimler Truck Financial Services USA LLC filed its Withdrawal of the Opposition to the Motion. Withdrawal; Dckt. 77. It appears that the Parties have actively and constructively worked during the continuance they requested from the prior hearing.

The court appreciates such constructive work by the Parties and their respective counsel.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Volodymyr Varha is substituted as the successor-in-interest to Mykola Varha and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

Final Ruling: No appearance at the July 25, 2023 Hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 8, 2023. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

One Time Exception Granted: The use of the required Certificate of Service Form in the Eastern District of California is a required form except for limited exception under the Local Bankruptcy Rules (which exception does not apply here). The Court makes a **One Time Exception** for Counsel for Debtor and his firm from this failure to comply with the Local Bankruptcy Rules of this court. Debtor and her counsel have addressed these matters and have brought forth a Settlement that benefits everyone. The court will not put such matter at peril, this time, by denying the Motion without prejudice and requiring the motion, supporting pleadings, and the proper Certificate of Service form to be filed.

Imposition of Corrective Sanction: If counsel or other attorneys in his firm subsequently fail to comply with the Local Bankruptcy Rules and do not use the required Certificate of Service form, the court will impose a **\$500.00 corrective sanction against the attorney** filing the pleadings, a **\$500.00 corrective sanction against the attorney's firm**, and a **\$500.00 corrective sanction against the person signing** the non-compliant certificate of service. If violations continue, the corrective sanction amounts will increase.

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Approval of Compromise is granted.

Albert Joseph Fahnestock, Chapter 13 Debtor, (“Movant”) requests that the court approve a compromise and settle competing claims and defenses with Jose Antonio Castillo Caparas (“Settlor”). The claims and disputes to be resolved by the proposed settlement are those resulting from a collision where Settlor’s vehicle struck Movant while Movant was riding his motorcycle.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Support Document in support of the Motion, Dckt. 40):

1. Movant accepts a check in the amount of \$200,000. The settlement breakdown includes:
 - a. Past Medical Bills: \$31,017.76
 - b. Past Wage Loss: \$22,600.00
 - c. Attorney’s Fees: \$70,000.00
 - d. Past and Future Suffering: remainder of proceeds
 - i. Debtor estimates \$10,246.05 of this is to be paid to their Chapter 13 Trustee to pay off all creditors and the total remaining balance and Plan in full.
2. Movant releases Settlor from all actions, claims and demands for injuries and consequences resulting from collision.
3. Movant’s personal injury attorneys, Dreyer Babich Buccola Wood Campora LLP, is to accept delivery of the proceeds and pay the estimated amount of \$10,246.05 to Trustee as 100% Plan payoff of all claims in full. Remaining funds are to be paid to Movant.

TRUSTEE’S NONOPPOSITION

Chapter 13 Trustee, David P. Cusick, (“Trustee”) filed a nonopposition on June 29, 2023. Dckt. 42. Trustee states Debtor is in month 44 of the 60 month Plan, and the monies from the settlement proceeds will pay all claims a 100% dividend.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat’l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S’holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Probability of Success

Movant's alleged claims against Settlor will require significant discovery, deposition, and eventually, a trial. There is a risk of loss and a delay in continuing the litigation. There exists a likelihood that Movant would receive less from trial than in this agreement.

Difficulties in Collection

Movant does not believe collection would be at issue here as the Settlor is insured.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that absent approval of the Settlement Agreement, the parties would need to continue to litigate. Litigation will involve discovery, depositions, and expert witnesses. The potential litigation will incur cost and delay to the Estate.

Paramount Interest of Creditors

Movant argues it is in the best interest of creditors because all creditors will be paid in full.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because continued litigation is costly and uncertain whereas the settlement provides a guaranteed sum of \$200,000 to the estate. The Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Compromise filed by Albert Joseph Fahnestock, Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Jose Antonio Castillo Caparas (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Support Document in support of the Motion (Dckt. 40).

14. [23-20330](#)-E-13
[MJD-2](#)

JUDE DICTADO
Matthew DeCaminada

MOTION TO CONFIRM PLAN
6-16-23 [40]

WITHDRAWN BY MP

Final Ruling: No appearance at the July 25, 2023 hearing is required.

Jude Anthony Dictado (“Debtor”) having filed a Withdrawal of Motion, which the court construes to be a Notice of Dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Confirm First Amended Chapter 13 Plan was dismissed without prejudice, and the matter is removed from the calendar.**

The Debtor has filed a Pleading titled “Withdrawal of Debtor’s Motion to Confirm First Amended Plan. No statutory or rule basis is provided for such “Withdrawal.” A search of the Bankruptcy Code, Federal Rules of Civil Procedure, and Federal Rules of Bankruptcy Procedure will show that there is not a basis for merely “withdrawing” from the court a matter.

However, Federal Rule of Civil Procedure 41(a), which is incorporated into Federal Rules of Bankruptcy Procedure 7041, allows for a “dismissal” of a complaint, motion, or applicant. It is the Rule that would be applicable for this Motion, Federal Rule of Civil Procedure 41(a)(1)(A)(i), which allows for a party to dismiss the complaint/motion unilaterally if no opposition has been filed thereto.

The court notes this because when relief is requested from the court or an action is taken, the legal basis therefore and the action identified must be correctly stated for it to be effective.

For this Motion, the court accepts the word “Withdraw” to mean “dismisses without prejudice the Motion to Confirm pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 7041 and 9014(c).”

Final Ruling: No appearance at the July 25, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on June 22, 2023. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is granted, and Creditor’s secured claim is determined to have a value of \$7,315.00.

The Motion filed by Matt Denny Sanchez and Esther Anna Maria Sanchez (“Debtor”) to value the secured claim of the Internal Revenue Service (“IRS” or “Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 66. Debtor is the owner of the following items, which some provide a benefit to the estate as listed below:

1. Furniture
 - a. Value: \$1,500
 - b. **Equity: \$1,500**
2. Appliances
 - a. Value: \$500
 - b. **Equity: \$500**

3. Kitchen Items
 - a. Value: \$400
 - b. **Equity: \$400**
4. Outdoor Items
 - a. Value: \$100
 - b. **Equity: \$100**
5. Pictures
 - a. Value: \$100
 - b. **Equity: \$100**
6. Exercise Equipment
 - a. Value: \$500
 - b. **Equity: \$500**
7. Electronics
 - a. Value: \$500
 - b. **Equity: \$500**
8. Clothing
 - a. Value: \$200
 - b. **Equity: \$200**
9. Jewelry
 - a. Value: \$220
 - b. **Equity: \$220**
10. Bank Accounts - Wells Fargo
 - a. Value: \$1
 - b. **Equity: \$1**
11. Bank Accounts - Cal Bear
 - a. Value: \$50
 - b. **Equity: \$50**
12. Bank Accounts - Term Life Insurance
 - a. Value: \$1
 - b. **Equity: \$1**
13. Bank Accounts - Cal Pers Retirement, not property of estate
14. 2017 Dodge Durango
 - a. Value: \$22,000
 - b. Cal Bear's Secured Claim: \$18,756.05
 - c. **Equity: \$3,243.95**

15. 2010 BMW
 - a. Value: \$12,000
 - b. Westlake's Secured Claim: \$15,054.27
 - c. **Equity: \$0**
16. 2013 Honda Civic
 - a. Value: \$8,000
 - b. Lendmark's Secured Claim: \$9,281.93
 - c. **Equity: \$0**
17. Timeshare
 - a. Value: \$2,500
 - b. Equiant/Thousand's Secured Claim: \$2,500
 - c. **Equity: \$0**

("Property"). As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). From the court's review of Debtor's Schedules A/B, as well as the secured claims filed in this case, the amount of equity in Debtor's Property that is available to support the IRS's claim is \$7,315.95.

TRUSTEE'S NONOPPOSITION

On July 5, 2023, Chapter 13 Trustee David Cusick ("Trustee") filed a nonopposition. Dckt. 79. Trustee states Debtor provides for Creditor as Class 2B in the Plan. Debtor's Schedules A/B support the valuation of personal property at \$7,315.00.

DISCUSSION

Creditor filed Proof of Claim No. 3-1 on November 10, 2022. The Proof of Claim asserts that \$36,836.88 is secured by the Property, that \$36,860.09 is a priority unsecured claim, and that \$49,338.09 is a general unsecured claim.

As has been disclosed, in filing proofs of claim, the IRS makes its own calculation for purposes of 11 U.S.C. § 506(a) based upon Debtor's assets and then bifurcates the secured and unsecured portions of its claim. The IRS appears to have followed that procedure here.

Upon review of the evidence and the statement of the secured claim for the IRS in Proof of Claim No. 3-1, the court determines the value of the secured claim to be \$7,315.95 with the balance to be treated as unsecured claims (whether priority or general unsecured claims).

The Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by Esther Anna Maria Sanchez and Matt Denny Sanchez (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of the Internal Revenue Service (“IRS” or “Creditor”) secured by personal property described as:

1. Furniture
2. Appliances
3. Kitchen Items
4. Outdoor Items
5. Pictures
6. Exercise Equipment
7. Electronics
8. Clothing
9. Jewelry
10. Bank Accounts - Wells Fargo
11. Bank Accounts - Cal Bear
12. Bank Accounts - Term Life Insurance
13. Bank Accounts - Cal Pers Retirement, not property of estate
14. 2017 Dodge Durango
15. 2010 BMW
16. 2013 Honda Civic
17. Timeshare

(“Property”) is determined to be a secured claim in the amount of \$7,315.95, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.

Final Ruling: No appearance at the July 25, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 19, 2023. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Substitute has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Substitute is granted.</p>
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Idy Garay, son of deceased Debtor Francisca Martinez Garay, seeks an order approving the motion to substitute as Debtor for the Deceased Debtor, Francisca Martinez Garay. This motion is being filed pursuant to Federal Rules of Bankruptcy Procedure 1004.1 and 1016.

Deceased Debtor filed for relief under Chapter 13 on March 29, 2018. On February 20, 2019, Deceased Debtor's Chapter 13 Plan was confirmed. Dckt. 53. On January 8, 2020, Deceased Debtor Francisca Martinez Garay passed away. Mr. Garay asserts that he is the lawful successor and representative of Deceased Debtor.

Pursuant to Federal Rules of Bankruptcy Procedure 1004.1 and 1016, Mr. Garay requests authorization to be substituted in for the Deceased Debtor and to perform the obligations and duties of the deceased party. A Suggestion of Death was filed on February 14, 2023. Dckt. 58. Mr. Garay is the son of the deceased party and is the successor's heir and lawful representative. Mr. Garay states that the Chapter 13 Plan was paid in full on December 8, 2022.

TRUSTEE'S NONOPPOSITION

The Chapter 13 Trustee, David P. Cusick, ("Trustee") filed a non-opposition on July 10, 2023. Dckt. 70. Trustee states that he does not oppose the Motion and requests that the court grant the Motion. *Id.* Trustee further states that Deceased Debtor is current on plan payments and the case is actually complete, with all creditors paid in full at 100%. *Id.*

DISCUSSION

Request for Substitution

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id.*

While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Idy Garay has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Idy Garay, as the son of the deceased party and as the successor's heir and lawful representative, may continue to administer the case on behalf of the Deceased Debtor, Francisca Martinez Garay. The court grants the Motion to Substitute Party.

Request for Waiver of Post-Petition Education Requirement

Local Bankruptcy Rule 5009-1(b) requires the filing with the court of Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. LOCAL BANKR. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

The court allows the waiver of the post-petition education requirement pursuant to the local rules.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Idy Garay is substituted as the successor-in-interest to Francisca Martinez Garay and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

IT IS FURTHER ORDERED that the requested waiver of 11 U.S.C. § 1328 Certification provided for the deceased Debtor Francisca Martinez Garay is granted.

17. [23-21552-E-13](#)
[DPC-1](#)

RONALD RATLIFF
Rabin Pournazarian

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
6-29-23 [18]

17 thru 18

Final Ruling: No appearance at the July 25, 2023 hearing is required.

Local Rule 9014-1(f)(2) Objection

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 29, 2023. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Trustee cannot assess the feasibility of the Plan because Debtor has possibly failed to provide all information required by the schedules.

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor admitted at the First Meeting of Creditors that their non-filing spouse has property in the Philippines. However, this property was not disclosed in Debtor's Schedules A/B. Debtor's Schedule J does not reflect any expenses to maintain these properties. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The court notes that Debtor has filed an amended plan (Dckt. 24) and a Motion to Confirm the amended plan (Dckt. 22). Debtor filed an amended Schedule J (Exhibit 2, Dckt. 26) that is identical to the original petition, so it is unclear as to what Debtor is amending. Debtor did not file an amended Schedules A/B that addresses Trustee's concerns.

NEW PLAN FILED

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on July 12, 2023. Dckts. 22, 24. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the July 25, 2023 hearing is required.

Local Rule 9014-1(f)(2) Objection

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 1, 2023. By the court's calculation, 54 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

NewRez LLC d/b/a Shellpoint Mortgage Servicing ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor fails to cure arrearages to Creditor.

NEW PLAN FILED

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on July 12, 2023. Dckts. 22, 24. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the July 25, 2023 hearing is required.

Local Rule 9014-1(f)(2) Objection

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 29, 2023. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The hearing on the Objection to Confirmation of Plan has been continued to September 26, 2023 at 2:00 p.m. in Courtroom 33 by prior order of the court.

MTGLQ Investors, L.P. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The plan fails to cure the arrearages owed to Creditor.
- B. The plan is infeasible because Debtor does not have sufficient income.

DISCUSSION

Creditor's objections are well-taken. Insert applicable drop-ins from below, each as its own paragraph.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$29,413.97 in pre-petition arrearages. The Plan only proposes to cure \$26,500 of arrears. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Schedules I and J indicate Debtor's monthly net income is \$2,400.00 (Dckt. 1) but Debtor's Plan provides for monthly payments of \$2,400.00 to Trustee for 60 months (Dckt. 3). Creditor argues Debtor does not have sufficient net income to increase the plan payment to cure the arrears owed to Creditor.

STIPULATION TO CONTINUE HEARING

On July 14, 2023, Debtor and Creditor filed a Stipulation to continue the hearing on Creditor's Objection to Plan to September 26, 2023 at 2:00 p.m. The court construes to be an *Ex Parte Motion* (as required by Fed. R. Bankr. P. 9013) and Stipulation to continue the hearing.

Federal Rule of Bankruptcy Procedure 9013 requires the filing of a motion or application when requesting an order from the court. Once a matter is set to the court's calendar, it may be continued by the court, not unilaterally by the parties. See, 8 Moore's Federal Practice - Civil § 40.02[5], L.B.R. 9014-1(j).

Upon consideration of the *Ex Parte Motion* and Stipulation, the court has continued the hearing on the Objection to Plan to September 26, 2023 at 2:00 p.m. Order, Dckt. 30.

Final Ruling: No appearance at the July 25, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 7, 2023. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. James Walker ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee") filed a Non-Opposition on July 7, 2023. Dckt. 154. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, James Walker ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on July 7, 2023, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.